

LOCAL RULE 4003-2: LIEN AVOIDANCE

- (a) **Applicability.** This local rule applies to cases under chapters 7, 11, and 12 of the Bankruptcy Code.
- (b) **Filing Requirements.** In a chapter 7, 11, or 12 case, a debtor seeking to avoid a lien pursuant to 11 U.S.C. § 522(f) shall use the passive notice procedure prescribed by SC LBR 9013-4 and must file with the Court simultaneously:
- (1) A passive notice (See Exhibit B to SC LBR 9013-4);
 - (2) The lien avoidance motion (See attached Exhibits A, C, and E); and
 - (3) A proposed order (See attached Exhibits B, D, and F).
- The above documents must substantially conform to the attached Exhibits in all material respects or the motion may not be considered or may be denied.¹
- (c) **Filing of Motions Following Closure of Case.** Unless otherwise ordered, following discharge and the closure of a case, a lien may be avoided pursuant to 11 U.S.C. § 522(f) and amended schedules may be filed in relation thereto without reopening the case pursuant to 11 U.S.C. § 350.

Notes:

(2008) Portions of former SC LBR 4003-1 were incorporated into this rule pursuant to Fed. R. Bankr. P. 9029(a) and the Judicial Conference's prescribed numbering conventions. Former paragraphs (b)(3), (d), and (e) were deleted as unnecessary. Former paragraph (f) was deleted as unnecessary based upon the incorporation of the Interim Bankruptcy Rules into the Federal Rules of Bankruptcy Procedure.

(2011) Exhibits A, B, C, D, and E were amended to clarify that a debtor does not have to claim an exemption to avoid a lien.

(2012) A technical amendment was made to the exhibits to remove the judge's signature line, which is unnecessary for electronically signed orders. Footnote 1 was added to the rule and technical and clarifying amendments were made to Exhibits A, B, C, and D.

¹ For proposed orders, instructional footnotes should be removed prior to submitting to the Court. For all forms, reference to "Exhibit __" should be removed prior to submission.

EXHIBIT A TO SC LBR 4003-2

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:

CASE NO:
CHAPTER:

MOTION TO AVOID JUDICIAL LIEN
(11 U.S.C. § 522(F)(1)(A))¹

DEBTOR(S)

TO THE TRUSTEE (if one is appointed) AND THE JUDGMENT LIEN CREDITOR LISTED BELOW:

Name of creditor and description of property securing lien	Estimated judicial lien	Total of all senior/unavoidable liens	Applicable Exemption and Code Section	Value of the debtor's interest in property	Judicial lien not avoided	Judicial lien avoided ²

The debtor hereby moves, in accordance with 11 U.S.C. § 522(f)(1)(A), to avoid the judicial lien of the creditor(s) named above in the amount listed above on the grounds that the judicial lien impairs the exemptions to which the debtor would otherwise be entitled under 11 U.S.C. § 522(b) and Chapter 41 of Title 15, Code of Laws of South Carolina, 1976 (as amended). The undersigned certifies the following:

(a) The judicial lien referenced above represents a judgment which has been recorded in a county in which the debtor owns real estate or in which there is a levy/attachment on personal property; and

(b) The property on which the judicial lien is sought to be avoided is owned by the debtor and the debtor is entitled to an exemption therein.

Date: _____

Signature of Attorney/*Pro Se* Debtor

Typed Printed Name

Address/Telephone/Facsimile/E-mail

District Court I.D. Number

¹ This form is for use only in chapter 7, chapter 11 and chapter 12 cases where the property subject to the lien is not co-owned as contemplated in *In re Ware*, 274 B.R. 206 (Bankr. D.S.C. 2001).

² The judicial lien is avoided to the extent that the sum of the judicial lien plus the total of all senior/unavoidable liens plus the amount of the exemption that the debtor could claim exceeds the value of the debtor's interest in property.

EXHIBIT B TO SC LBR 4003-2

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:

CASE NO:
CHAPTER:

ORDER AVOIDING JUDICIAL LIEN (11 U.S.C. §
522(F)(1)(A))¹

DEBTOR(S)

Before the Court is the motion of the debtor to avoid the judicial lien held by the following creditor:

Name of creditor and description of property securing lien	Estimated judicial lien	Total of all senior/unavoidable liens	Applicable Exemption & Code Section	Value of the debtor's interest in property	Judicial lien not avoided	Judicial lien avoided

The Court finds that the judicial lien of the above-named creditor impairs the exemptions to which the debtor would otherwise be entitled under 11 U.S.C. § 522(b) and Chapter 41 of Title 15, Code of Laws of South Carolina, 1976 (as amended), and that the judicial lien should therefore be avoided pursuant to 11 U.S.C. § 522(f)(1)(A) in the amount set forth above.

Therefore, IT IS ORDERED that the judicial lien held by the above-named creditor be, and hereby is, avoided in the amount set forth above. Any judicial lien set forth above which is avoided in full may be canceled of record at any time after thirty (30) days after a discharge in this case is granted.

¹ This form is for use only in chapter 7, chapter 11 and chapter 12 cases where the property subject to the lien is not co-owned as contemplated in In re Ware, 274 B.R. 206 (Bankr. D.S.C. 2001).

EXHIBIT C TO SC LBR 4003-2

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:

CASE NO:
CHAPTER:

MOTION TO AVOID JUDICIAL LIEN
(11 U.S.C. § 522(F)(1)(A)) EQUITY ANALYSIS/ CO-
OWNED PROPERTY¹

DEBTOR(S)

TO THE TRUSTEE (if one is appointed) AND JUDGMENT LIEN CREDITOR LISTED BELOW:

Name of creditor and description of property securing lien	Total Equity (Value of debtor's property less senior/unavoidable liens) ²	Debtor's Equity (Total equity multiplied by debtor's proportional interest in property) ³	Applicable Exemption and Code Section	Non-exempt Equity (Debtor's equity less exemption) ⁴	Estimated judicial lien	Judicial lien not avoided	Judicial lien avoided ⁵

The debtor hereby moves, in accordance with 11 U.S.C. § 522(f)(1)(A), to avoid the judicial lien of the creditor(s) named above in the amount listed above on the grounds that the judicial lien impairs the exemptions to which the debtor would otherwise be entitled under 11 U.S.C. § 522(b) and Chapter 41 of Title 15, Code of Laws of South Carolina, 1976 (as amended). The undersigned certifies the following:

(a) The judicial lien referenced above represents a judgment which has been recorded in a county in which the debtor owns real estate or in which there is a levy/attachment on personal property; and

(b) The property on which the judicial lien is sought to be avoided is owned by the debtor and the debtor is entitled to an exemption therein.

Date: _____

Signature of Attorney/*Pro Se* Debtor

Typed Printed Name

Address/Telephone/Facsimile/E-mail

District Court I.D. Number

¹ This form is for use in chapter 7, chapter 11, and chapter 12 cases when the Court's equity analysis for co-owned property is applicable pursuant to In re Ware, 274 B.R. 206 (Bankr. D.S.C. 2001).

² Deduct any senior judicial liens for which the debtor and co-owner(s) are jointly liable here. Senior judicial liens encumbering debtor's interest only should be deducted from debtor's non-exempt equity.

³ For example, for property owned in equal shares by two individuals, multiply by 1/2.

⁴ Deduct any senior judicial liens encumbering debtor's interest only here. See id. at 209 (stating that under the debtor's equity analysis, judicial liens according to their priority remain to the extent of available non-exempt equity and the remainder of judicial liens are avoided).

⁵ The judicial lien is avoided to the extent that the estimated judicial lien exceeds the available non-exempt equity.

EXHIBIT D TO SC LBR 4003-2

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:

CASE NO:
CHAPTER:

ORDER AVOIDING JUDICIAL LIEN (11 U.S.C. §
522(F)(1)(A)) EQUITY ANALYSIS/CO-OWNED
PROPERTY¹

DEBTOR(S)

Before the Court is the motion of the debtor to avoid the judicial lien held by the following creditor:

Name of creditor and description of property securing lien	Total Equity (Value of debtor's property less senior/unavoidable liens) ²	Debtor's Equity (Total equity multiplied by debtor's proportional interest in property) ³	Applicable Exemption and Code Section	Non-exempt Equity (Debtor's equity less exemption) ⁴	Estimated judicial lien	Judicial lien not avoided	Judicial lien avoided

The Court finds that the judicial lien of the above-named creditor impairs the exemptions to which the debtor would otherwise be entitled under 11 U.S.C. § 522(b) and Chapter 41 of Title 15, Code of Laws of South Carolina, 1976 (as amended), and that the judicial lien should therefore be avoided pursuant to 11 U.S.C. § 522(f)(1)(A) in the amount set forth above.

Therefore, IT IS ORDERED that the judicial lien held by the above-named creditor is avoided in the amount set forth above. Any judicial lien set forth above which is avoided in full may be canceled of record at any time after thirty (30) days after a discharge in this case is granted.

¹ This form is for use in chapter 7, chapter 11, and chapter 12 cases when the Court's equity analysis for co-owned property is applicable pursuant to In re Ware, 274 B.R. 206 (Bankr. D.S.C. 2001).

² Deduct any senior judicial liens for which the debtor and co-owner(s) are jointly liable here. Senior judicial liens encumbering debtor's interest only should be deducted from debtor's non-exempt equity.

³ For example, for property owned in equal shares by two individuals, multiply by ½.

⁴ Deduct any senior judicial liens encumbering debtor's interest only here. See id. at 209 (stating that under the debtor's equity analysis, judicial liens according to their priority remain to the extent of available non-exempt equity and the remainder of judicial liens are avoided).